

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES E. REUTER and EVA REUTER,
Debtors.

Case No. 590-05812-MM
Chapter 7

LEONARD YERKES,
Plaintiff,

Adversary No. 91-5294

vs.

MEMORANDUM DECISION

JAMES E. REUTER and EVA REUTER,
Defendants.

INTRODUCTION

Before the Court for consideration are the Defendant's Motion for Order Dismissing First Amended Complaint or for Summary Judgment and the Plaintiffs' Motion for Relief from Alleged Late Filing.

FACTS

On July 17, 1991, Leonard Yerkes filed a Proof of Claim in this bankruptcy case on behalf of a group of investors known as the Yerkes Group. That proof of claim lists the members of that investor group as Leonard Yerkes, III, Leonard Yerkes, Jr. (now deceased), Whitney Yerkes, as custodian for Philip Yerkes (now of majority), George Kerr, and Harold Talbot. On July 26, 1991, Leonard Yerkes and Robert Cranmer-Brown, the original plaintiffs, filed a timely Complaint to Determine the

1 Dischargeability of Debts under Sections 523(a)(2), (a)(4), and (a)(6) based upon the plaintiffs'
2 investments in a Creamery Project and the Los Altos Athletic Club Project. The bar date for filing
3 dischargeability complaints was March 23, 1992. Prior to that date, the parties entered into a stipulation
4 which provided for the amendment of the Complaint to allow for the dismissal of the claims of Mr.
5 Cranmer-Brown, for the dismissal of Yerkes' claims based on the Creamery Project, and for the addition
6 of the other members of the Yerkes Group who were not named as plaintiffs in the original Complaint.
7 The stipulation was signed by counsel for the respective parties and filed with this Court on March 20,
8 1992. A copy of the proposed Amended Complaint was attached to the stipulation. The Amended
9 Complaint does not include any additional claims for relief against the Debtor. The Debtor thereafter
10 unilaterally revoked his consent to the amendment to the complaint although the stipulation has not been
11 set aside. The plaintiffs thereafter filed the Amended Complaint on July 14, 1992 after the expiration of
12 the bar date.

13 14 DISCUSSION

15 The law is clear that the Court does not have discretion to enlarge the time for filing a complaint
16 to determine the dischargeability of a debt if the request is made after the deadline. In re Neese, 87
17 Bankr. 609, 610-11 (9th Cir. BAP 1988). However, that is not the determinative issue in this situation.
18 We do not have the filing of an original complaint to determine dischargeability, but an amended
19 complaint filed after the bar date while the original complaint was timely filed. The question presented
20 is whether the amended complaint should be permitted to relate back to the filing of the plaintiff's original
21 complaint.

22 Fed. R. Civ. P. 15(a) provides that after a responsive pleading has been filed, a party may amend
23 a pleading only by leave of court, and leave shall be freely given when justice so requires. Further, Fed.
24 R. Civ. P. 15(c) permits an amended pleading to relate back to the date of the original pleading if the
25 assertions in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the
26 original pleading. The purpose of this provision is to ensure proper notice to the defendant of the claims
27 against him. Andujar v. Rogowski, 113 F.R.D. 151, 155-56 (S.D.N.Y.)

28 The reasons that a court may deny a motion for leave to amend include undue delay, bad faith,

1 prejudice to the opposing party, or the futility of the amendment. *Id.* at 154. However, a court may even
2 permit amendments to add additional plaintiffs after the running of the limitations period where the
3 proposed amendment

4 relates back to the same conduct, transaction, or occurrence set forth in the original pleading. *Id.* at 155-
5 56. This principle also applies to complaints objecting to the dischargeability of a debt filed after the bar
6 date if the clear subject of both the original complaint and the amended complaint is the dischargeability
7 of a specific loan or debt, as is the case here. *In re Englander*, 92 Bankr. 425, 428 (9th Cir. BAP 1988).

8 Determinative here is the stipulation that the Debtor agreed to while represented by competent
9 counsel. The policy of providing adequate notice prior to the expiration of the limitations periods is not
10 defeated here. The debtor knew of the substance of the claims against him and of the existence of the
11 other members of the investment group before the expiration of the bar date. Therefore, the debtor is
12 not prejudiced by the allowance of the amendment. Moreover, there is no indication that the plaintiffs
13 filed the amendment in bad faith or with undue delay.

14 15 CONCLUSION

16 The defendant's Motion for Order Dismissing the First Amended Complaint or for Summary
17 Judgment is denied. The plaintiffs' Motion for Relief from Alleged Late Filing will be allowed under Fed.
18 R. Civ. P. 15(a) so that plaintiffs are granted leave to file their Amended Complaint, and that Amended
19 Complaint shall relate back to the timely filing of the Original Complaint on July 26, 1991 pursuant to
20 Fed. R. Civ. P. 15(c).